

BBS briefing note

Trivial Commutation and Payments made in Error

The long-awaited Registered Pension Schemes (Authorised Payments) Regulations 2009 came into force on 1 June 2009. They set out new circumstances in which benefit entitlements can be trivially commuted and permit certain payments made in error to be treated as “authorised payments”.

This *BBS briefing note* summarises the new provisions.

TRIVIAL COMMUTATION

The idea of trivial commutation is to allow very small annual pension entitlements to be paid instead as a one-off lump sum. As the Explanatory Notes to the Regulations state, this “prevents schemes having to pay pensions that would be uneconomic for them to administer and of little real value to the member”.

Since 6 April 2006 (“A-day”), it has only been possible to commute benefits for a trivial commutation lump sum where the following conditions are met:

- the total value of the member’s entitlements under *all* registered pension schemes is less than 1% of the Lifetime Allowance (amounting to £17,500 for 2009/10);
- the member is between the ages of 60 and 75;
- all trivial benefits are paid within a single 12 month “commutation period” (starting from the date the first trivial commutation payment is made after A-day); and
- the lump sum payment extinguishes all the member’s benefits in the scheme.

The 2009 Regulations do not replace but supplement the existing regime with additional circumstances in which trivial commutation sums may be paid. The new provisions apply in respect of payments made after 1 December 2009.

The additional circumstances include:

- i. The ability to pay a trivial commutation lump sum of up to £2,000 without reference to benefits from any other arrangements. There are a number of attaching conditions, including;
 - the member must be aged between 60 and 75;
 - the commutation lump sum must extinguish the member’s entitlement under the scheme; and
 - no transfer has been made out of the scheme, or any related scheme, in respect of the member in the preceding 3 years.
- ii. The ability to pay a trivial commutation lump sum of up to £2,000 to, or in respect of, a member who has reached the age of 75 but was previously untraceable. The administrator must have taken reasonable steps to trace the member and must have received no communication from the member for at least 5 years before discovering their whereabouts or learning of their death. The payment must be made within 12 months of learning of the member’s whereabouts or death, or by 1 June 2010 if later, and must extinguish the member’s entitlement under the scheme.
- iii. The ability to make a payment to a member who qualifies for trivial commutation under the existing provisions except for the fact that they will continue to receive annuity payments after the lump sum is paid.

The Regulations set out other additional circumstances where trivial commutation can now apply.



BBS briefing note (continued)

PAYMENTS MADE IN ERROR

Since A-day, any payments that are not expressly “authorised” under the Finance Act 2004 have been subject to tax charges and reporting requirements, e.g. annual HMRC Event Reporting.

The Regulations now permit certain overpayments or payments made in error to be treated as “authorised payments”, thereby avoiding such consequences. These provisions have retrospective effect from 6 April 2006.

The Regulations authorise certain payments made in error, for example to the wrong person or in the wrong amount, including payments which are made after the discovery of the error, for example where the administrator is unable to stop the payment in time.

Pension payments made up to 6 months after the death of a pensioner are also covered provided the administrator did not know, and could not reasonably have been expected to know, that the pensioner had died before the payment was made. The payment will also be authorised where the administrator did know of the death but took reasonable steps to stop the payment.

BBS VIEW

These relaxations to the legislation recognise the problems that administrators have been facing since A-day in relation to small pension entitlements and payments made in error, e.g. following late notification of a member’s death. Whilst they are to be welcomed, each provision is subject to a long list of conditions.

Trustees and administrators will need to review their scheme rules to ensure that these new payments can be made and put procedures in place to ensure that any

payments made satisfy all of the relevant criteria. BBS will be assisting its clients in this process.

